

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-080759
	:	TRIAL NO. B-0800160
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
GERALD WALLACE,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Defendant-appellant, Gerald Wallace, appeals the judgment of the Hamilton County Court of Common Pleas convicting him of possessing a weapon while under disability. He was convicted after a bench trial.

Police officers saw Wallace and Dewanna Mitchell leave an apartment building and get into a car. The officers then executed a search warrant they had obtained earlier. During the search, they found a number of guns.

When the officers stopped the car, Wallace had keys to the apartment in his pocket. At first, he denied any knowledge of the guns in the apartment. But one of the officers testified that, on further questioning, Wallace had admitted holding the guns for a friend and had admitted having fired the guns several days earlier.

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Wallace took the stand in his own defense and testified that he had visited Mitchell at the apartment, but that he had not resided there. He stated that his friends had brought the guns to the residence, but he denied having possessed or fired them.

The trial court found him guilty and sentenced him to five years' imprisonment.

In his first assignment of error, Wallace now argues that his conviction was based on insufficient evidence and was against the manifest weight of the evidence.

In the review of the sufficiency of the evidence to support a conviction, the relevant inquiry for the appellate court "is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."<sup>2</sup> To reverse a conviction on the manifest weight of the evidence, a reviewing court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and conclude that, in resolving the conflicts in the evidence, the trier of fact clearly lost its way and created a manifest miscarriage of justice.<sup>3</sup>

R.C. 2923.13(A)(3) provides that "no person shall knowingly acquire, have, carry, or use any firearm or dangerous ordnance \* \* \* if \* \* \* [t]he person \* \* \* has been convicted of any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse \* \* \*."

In this case, the conviction was in accordance with the evidence. Wallace stipulated that he was under disability for a prior drug offense. And the state introduced Wallace's statement, in which he had admitted holding the guns for a

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<sup>2</sup> *State v. Waddy* (1992), 63 Ohio St.3d 424, 430, 588 N.E.2d 819.

<sup>3</sup> *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

friend and firing the guns. Although he testified that he had not possessed the weapons, the trial court did not lose its way in finding him guilty.

In his second assignment of error, Wallace argues that he was denied the effective assistance of counsel. Specifically, he argues that counsel was ineffective in failing to file a motion to suppress the evidence that had been recovered in the search of the apartment.

To establish ineffective assistance of counsel, the defendant must demonstrate that counsel's performance fell below an objective standard of reasonable performance and that prejudice arose from counsel's performance.<sup>4</sup> A defendant demonstrates prejudice by showing that, but for counsel's errors, there was a reasonable probability that the result of the proceeding would have been different.<sup>5</sup>

In this case, we find no deficiency in counsel's performance. First, Wallace has failed to demonstrate any defect in the search warrant or any other basis upon which a motion to suppress would have been successful. Second, Wallace's defense was that he had had no connection to the apartment. As such, he could not have successfully asserted a privacy interest in the residence. Although the trial strategy was ultimately unsuccessful, we cannot say that counsel's performance fell below an objective standard of reasonableness.<sup>6</sup> We overrule the second assignment of error.

In his third and final assignment of error, Wallace argues that the cumulative effect of errors in the trial proceedings rendered the conviction improper. Having found no prejudicial errors in the proceedings, we also hold that there was no

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<sup>4</sup> *Strickland v. Washington* (1984), 466 U.S. 668, 686, 104 S.Ct. 2052; *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373, paragraphs two and three of the syllabus.

<sup>5</sup> *Strickland*, supra, at 694, 104 S.Ct. 2052.

<sup>6</sup> See, e.g., *State v. Johnson*, 1st Dist. Nos. C-080156 and C-080158, 2009-Ohio-2568, ¶63 (reaffirming "the presumption that defense counsel's performance constituted sound trial strategy").

cumulative reversible error. We overrule the third assignment of error and affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., CUNNINGHAM and WINKLER, JJ.**

**RALPH WINKLER**, retired, of the First Appellate District, sitting by assignment.

*To the Clerk:*

Enter upon the Journal of the Court on August 12, 2009  
per order of the Court \_\_\_\_\_.  
Presiding Judge